

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

CSX TRANSPORTATION, INC.,  
individually and on behalf of NORFOLK  
& PORTSMOUTH BELT LINE  
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-RJK

NORFOLK SOUTHERN RAILWAY  
COMPANY, *et al.*,

Defendants.

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**STIPULATED ORDER ON TRIAL SCHEDULE**

Plaintiff CSX Transportation, Inc. (“CSX”) and Defendants Norfolk Southern Railway Company (“NS”) and Norfolk and Portsmouth Beltline Railway Company (“NPBL”), by counsel, stipulate and agree, to accommodate the availability of certain witnesses and to narrow the scope of deposition designations to be addressed before trial, that at trial CSX will not rest its case-in-chief until NS witnesses Jeffrey Heller and Michael McClellan have testified. The parties stipulate and agree that NS intends to call Mr. Heller and Mr. McClellan during NS’s case-in-chief, and that the testimony and other evidence elicited through CSX’s cross examination of these witnesses will be considered part of CSX’s case-in-chief.

In the event that Mr. Heller and/or Mr. McClellan do not testify during NS’s case-in-chief – due to either witness’s unavailability or for any other reason – the parties stipulate and agree that CSX may call these witnesses out of turn, or may enter their deposition testimony, and the exhibits referenced within designated deposition testimony, into evidence, subject to Defendants’ objections. To this end, the parties stipulate and agree that Court need not rule

on outstanding objections to Mr. Heller's or Mr. McClellan's deposition testimony designated by either party, at the continuation of the Final Pretrial Conference on January 11, 2023.

In addition, in the unlikely event that a witness who has been disclosed by any party as appearing live at trial and who is also identified as a party witness, becomes unavailable to testify at trial, the parties stipulate and agree that the opposing party may enter their deposition testimony, and the exhibits referenced within that designated deposition testimony, into evidence. Defendants specifically preserve their objections to this deposition testimony and any related exhibits.

Entered this 12<sup>th</sup> day of January, 2023.

  
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Robert J. Krask  
United States Magistrate Judge  
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WE ASK FOR THIS:

**CSX TRANSPORTATION, INC.**

*By Counsel*

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**NORFOLK SOUTHERN RAILWAY COMPANY**

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